HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.15392 OF 2007

Between:

Sree Venkateswara Trading Company,
Rep., by its Managing Partner
Mr. Chunduru Seetha Rama Prasad,
S/o. Venkateswara Rao, R/o.D.No.1-4/5-36A,
Raam Jaswanth, Kamakotinagar,
Vidhyadharapuram, Vijayawada and two others

…Petitioners

AND

The Debts Recovery Appellate Tribunal,
Chennai, rep., by its Registrar and
ten others

...Respondents

: O R D E R :

Counsel for the petitioners : Shri G. Vidyasagar

July 20, 2007

Per G.S.SINGHVI, CJ

This petition filed by Sree Venkateswara Trading Company and two others for quashing orders dated 23-3-2007 and 8-5-2007 passed by Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal') and Debts Recovery Appellate Tribunal, Chennai (for short, 'the Appellate Tribunal') in I.A No. 15 of 2007 and M.A No. 61 of 2007 respectively is a typical example of the people taking loans and other fiscal facilities from public financial institutions, utilizing the same for furthering their business and other interests, not paying the dues of the banks etc., and then involving such bodies in the maze of litigation with the sole object of postponing the inevitable. This unscrupulous creed of litigants successfully used the judicial court system and frustrated recovery of many thousand crores of rupees belonging to the banks and other financial institutions. In order to redeem the situation, the Parliament enacted the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act'), whereunder special machinery was created for expeditious disposal of the cases filed by the banks and financial institutions for recovery of their dues. This legislative effort also proved futile because Presiding Officers who were largely drawn from the Judicial Services of the States adopted the outmoded methodology for disposal of such cases. They usually invoked different provisions of the Code of Civil Procedure, which proved to be great impediment in expeditious adjudication of the applications filed by the banks and other financial institutions under Section 19 of the 1993 Act.

On a rough estimate, Rs.1,20,000/- Crores were due to the banks and financial institutions as in the year 2001 and they were finding extremely difficult to use the existing adjudicatory mechanism for recovery of their dues. Therefore, just after nine years of the

enactment of the 1993 Act, the Parliament had to intervene and enact the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the 2002 Act'). For next two years, the implementation of the 2002 Act was partially halted because cases involving vires of the 2002 Act were filed in different courts including the Supreme Court. In **Mardia Chemicals Limited v. Union of India**[1], the Supreme Court ruled in favour of the legislative mandate and cleared most of the hurdles in the process of recovery of the dues of the financial institutions. However, the innovative legal brains still find mechanism like this petition to prolong the finalisation of action initiated by the banks and financial institutions for recovery of their dues.

Petitioner No.1 is engaged in the business of Rosin and Paints. In the year 1985, petitioner No.1 availed several credit facilities from Sri Lakshmi Vilas Bank Ltd. (for short, 'the bank'). Petitioner Nos.2 and 3 and some of the respondents executed letters of guarantee for repayment of the loan availed by petitioner No.1. On June 20, 1988, the bank filed suit (O.S.No.333 of 1988) for recovery of Rs.11,92,308/- with interest at the rate of 17.5%. On establishment of the Tribunals under the 1993 Act, the suit was transferred to the Bangalore Bench of the Tribunal and was registered as O.A.No.991 of 1997. By an ex parte order dated 30-11-1998, the Tribunal decreed the application and directed petitioner No.1 to repay the amount due to the bank along with interest. The petitioners applied for setting aside the ex parte order, but could not succeed. Appeal preferred by them was dismissed by the Appellate Tribunal. Thereafter, they filed Writ Petition No.2659 of 2003. By an order dated 4-9-2003, a Division Bench of this Court quashed orders dated 13th March, 2003 and 9th May, 2003 passed by the Tribunal and the Appellate Tribunal respectively and directed the Tribunal to dispose of O.A. No.991 of 1997 afresh.

The bank challenged the order of the Division Bench in Petition

for Special Leave to Appeal Nos.23573-23574 of 2003, which were dismissed by the Supreme Court on 11-10-2004 with the direction that the amount deposited by the respondents (the petitioners herein) with the bank shall not be refundable without specific order of the concerned court.

In the meanwhile, the petitioners filed I.A.No.902 of 2003 for restitution of Rs.35,00,000/-, which they had deposited with the bank pursuant to the orders passed by the High Court. They also claimed interest at the rate of 17½%. On its part, the bank also filed I.A.No.57 of 2004 for attachment of Rs.35,00,000/-. By an order dated 20th November, 2006, the Tribunal disposed of both the applications by making the following observations:

> "The amount was deposited with the RO and whatever might be the reason of depositing, the amounts were deposited with the Recovery Officer and the same was withdrawn by the applicant bank. In the written statement filed by the defendant 1, 2 and 9 before this Tribunal, it is admitted at para – 6 of the written statement that it is six independent facilities were extended to the 1st defendant firm and the D1 has signed on blank printed forms and applicant bank used the said documents and incorporated certain terms which were not even contemplated under the sanction and the terms of the agreement by either of the parties and however there is an admission with regard to the taking of loan and the liability in respect of repayment of the loans are denied in the written statement. This aspect of liability has to be decided only during the course of trial and in order to safeguard the interest of the both the parties, the applicant bank is directed to keep the amount of Rs. 35 lakhs in fixed deposit till the OA is disposed off and the disbursal of this amount will be considered at the time of deciding of the OA. Accordingly, the I.A.No. 902 of 2003 and IA No. 57 of 2004 are disposed off. Both the parties are hereby directed to get ready for the trial without seeking much adjournments to enable the Tribunal to dispose of the OA without much delay."

The petitioners also filed Writ Petition No.25193 of 2006 for issue of a direction to the bank to pay back the amount of Rs.35,00,000/-. That petition was dismissed by the learned Single Judge on 4-12-2006. The operative part of that order reads as under:

> "Hence, though a writ of mandamus as prayed for cannot be granted, the petitioners are granted liberty to move an appropriate application before the Tribunal for return of the immovable property securities furnished by them. If any such application is made, the Tribunal shall consider the same and pass appropriate orders in accordance with law after hearing both parties."

By taking cue from the order of the learned Single Judge, the petitioners filed I.A.No.15 of 2007 before the Tribunal for release of sale deeds dated 25-3-1982, 29-3-1982, 2-1-1981, 16-10-1947, 22-6-1985, 22-5-1970 and Will dated 20-6-1983, which were deposited as security for repayment of the loan etc. By an order dated 23-3-2007, the Tribunal dismissed the application by observing that as per the bank, the current liability of the applicants (the petitioners herein) was more than Rs.4 Crores. The relevant portion of the Tribunal's order reads as under:

> "……..Even according the petitioner the suit was filed for recovery of an amount of Rs. 16,47,765.45 Ps as long as in the year 1988. According to the memo filed by the applicant bank the present liability is in the order of Rs. 4,19,03,486.84 ps as against the dues of Sri Venkateswara Trading Co., the first defendant and an amount of Rs. 2,23,65,287.10 ps as against Rosin House which is covered by OA 13/03 and this amount of Rs. 35 lakhs will not be sufficient to satisfy the decree in case the order is passed in favour of the applicant bank and therefore the properties cannot be released unless the amount is decided by this Tribunal and only after disposal of the OA the payment of the amount can be decided and unless and until the liability is decided the amount of Rs. 35 lakhs is ordered to be keep in fixed deposit only which can also earn interest, and this Tribunal also directed the petitioners to get ready for the trial and the matter is coming on for trial and the matter can be decided at the earliest after both parties cooperate with the Tribunal for disposal of the matter and according to the learned counsel of the respondent bank the amount of Rs. 35 lakhs will not at all be sufficient to satisfy in Recovery Certificate that may be issued in favour of the applicant bank. In the written statement filed by D1, 2 and 9 para-6 the liability and sanctioning of the loan the question of release of the mortgage will not arise. In these circumstances, the mortgage properties cannot be released and the mortgage created by way of deposit of title deeds and the release of title deeds means that the release of the mortgage and it is for the applicant bank to release the mortgage or not and it is not for this

> Tribunal to return the documents when the matter is still sub-judice. The mortgage has to be established before this Tribunal. The creation of mortgage is contract between the parties and it is for the Bank to release it or not. This Tribunal can only enforce the mortgage and cannot release the mortgage. The documents are also very much necessary to prove the mortgage and it is not for the Tribunal to release the mortgages and in the interest of both parties the amount was ordered to be kept in fixed deposit with the applicant bank till disposal of the main OA and in these circumstances I see reason for return of the documents and the therefore this application I.A.No.15/07 is dismissed with costs."

The Appellate Tribunal approved the reasons assigned by the Tribunal and dismissed M.A.No.61 of 2007 filed by the petitioners. The Appellate Tribunal noted that the liability of the petitioners is more than Rs.4 Crores and held that they cannot be permitted to withdraw Rs.35,00,000/- or get the title deeds released.

Shri G. Vidyasagar, learned counsel for the petitioners made strenuous efforts to convince that without getting the title deeds and Will, the petitioners will not be able to carry on their business and it will be impossible for them to clear the dues of the bank. He submitted that the total liability of the petitioners is only Rs.16,00,000/-, whereas the value of the property covered by the sale deeds etc. is many crores and, therefore, there is no justification on the bank's part to retain the documents. Learned counsel emphasised that the petitioners cannot be blamed for delay in the decision of the suit filed by the bank, which was, later on, converted into O.A., because the original decree passed by the Bangalore Bench of the Tribunal was nullity and was set aside by the Division Bench of this Court. In the end, Sri G. Vidyasagar submitted that the petitioners were willing to pay the amount due to the bank in accordance with One Time Settlement Scheme, but the latter did not accept their offer.

We have given serious thought to the submissions of the learned counsel, but have not felt persuaded to quash the orders under challenge because the petitioners, who have come out with the plea of compassion in addition to their so-called legitimate right to seek return

of the securities furnished to the bank at the time of sanction of credit facilities, have successfully manipulated the apparatus of the Tribunals and the court system for prolonging the disposal of the suit which was later on transferred as an application under the 1993 Act. All this is clearly borne out from the various cases instituted by them. A reading of order dated 20th November, 2006 shows that the Tribunal has assigned cogent reasons for not entertaining the prayer of the petitioners for return of the documents. The Appellate Tribunal confirmed that order by observing that a sum of more than Rs.4 Crores is payable by the petitioners. In last 19 years, the petitioners have not paid a single penny to the bank towards the credit facilities availed by them. Therefore, we do not see any valid reason to interfere with the discretion exercised by the Tribunal and the Appellate Tribunal.

It is trite to say that in exercise of its power under Article 226 of the Constitution of India, the High Court will not issue a writ of certiorari except when order passed by the court, judicial or quasi-judicial authority is found to be vitiated due to lack of jurisdiction or is in excess of jurisdiction or violation of the rules of natural justice or the finding recorded by the court, tribunal or quasi judicial authority is vitiated by an error of law apparent on the face of the record. The petitioners have not been able to establish the existence of either of the ingredients. Therefore, the impugned orders cannot be quashed by entertaining the plea of compassion put-forward by the petitioners.

In the result, the writ petition is dismissed.

At this stage, Shri G. Vidyasagar made a request that this Court may direct the Tribunal to finally dispose of the main application filed by the bank. This request of the learned counsel appears to be reasonable and is accepted. The Tribunal is directed to finally dispose of the application of the bank within a maximum period of two months from the date of presentation of copy of this order.

As a sequel to dismissal of the writ petition, WPMP No. 19440 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 20, 2007

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[1] (2004) 4 SCC 311